



Boali Lodge, Thredbo Modification

Modification Application Assessment (MOD 23/3688 (DA 9602 MOD 1))

July 2023

Published by the NSW Department of Planning and Environment

dpie.nsw.gov.au

Title: Boali Lodge, Thredbo, Modification

Subtitle: Modification Application Assessment (MOD 23/3688 (DA 9602 MOD 1))

Cover image: Main Range, Kosciuszko National Park (Source: Alpine Resorts Team)

© State of New South Wales through Department of Planning and Environment 2023. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (July 2023) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Glossary

Abbreviation	Definition
BCA	Building Code of Australia
BC Act	<i>Biodiversity Conservation Act 2016</i>
BC Regulation	<i>Biodiversity Conservation Regulation 2017</i>
BVM	Biodiversity Values Map
Consent	Development Consent
Department	Department of Planning and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2021</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
KNP	Kosciuszko National Park
Minister	Minister for Planning
NPWS	National Parks and Wildlife Service
Planning Secretary	Secretary of the Department of Planning and Environment
RFS	NSW Rural Fire Service
SEPP	State Environmental Planning Policy

Contents

1	Introduction	1
2	Matters for Consideration	4
2.1	Strategic Context.....	4
2.2	Mandatory matters for consideration.....	4
2.3	Scope of modifications	5
2.4	Other approvals.....	6
3	Submissions	7
3.1	Department's engagement.....	7
3.2	Summary of submissions	7
4	Assessment	9
5	Recommendation.....	11
	Appendices	12
	Appendix A – Notice of Modification	12

1 Introduction

The modification application seeks approval to modify development consent (DA 9602) for internal and external renovations to Boali Lodge located at 16A Diggings Terrace, Thredbo Village, Thredbo Alpine Resort within Kosciuszko National Park (KNP) (**Figure 1**). The application has been lodged by Gartner Trovato Architects Pty Ltd (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).



Figure 1 | Site in context of Thredbo Village (Source: SIX Maps with annotations)

On 3 December 2018, the Team Leader of the Alpine Resorts Team, as delegate of the Minister for Planning, granted consent to Development Application DA 9602 for the following:

- internal alterations: the removal of an existing spa adjoining a sauna room on Level 2 and the construction of an additional guest toilet and shower in place of the spa, and
- external alterations: the replacement of the existing solid balustrade to the lounge room balcony with an open balustrade.

This proposal to modify DA 9602 seeks to alter the works with the following modifications to the development:

On Level 1:

- enlarging a laundry storeroom and converting it to a guest bathroom: proposed works comprise removing a wall in the current storeroom area and extending the dividing wall between the laundry and storeroom area. A new door will be installed to the hallway to enclose the space as a guest bathroom fitted with a toilet, basin and shower, including lifting the ceiling to 2200mm and installation of an external exhaust vent.

- remove a section of wall between the hallway and laundry to enlarge the laundry door entry area.
- convert a general store room to a food storage room with a refrigeration area (freestanding fridges) and shelving for dry food storage (Level 1 modifications refer to **Figure 2**).

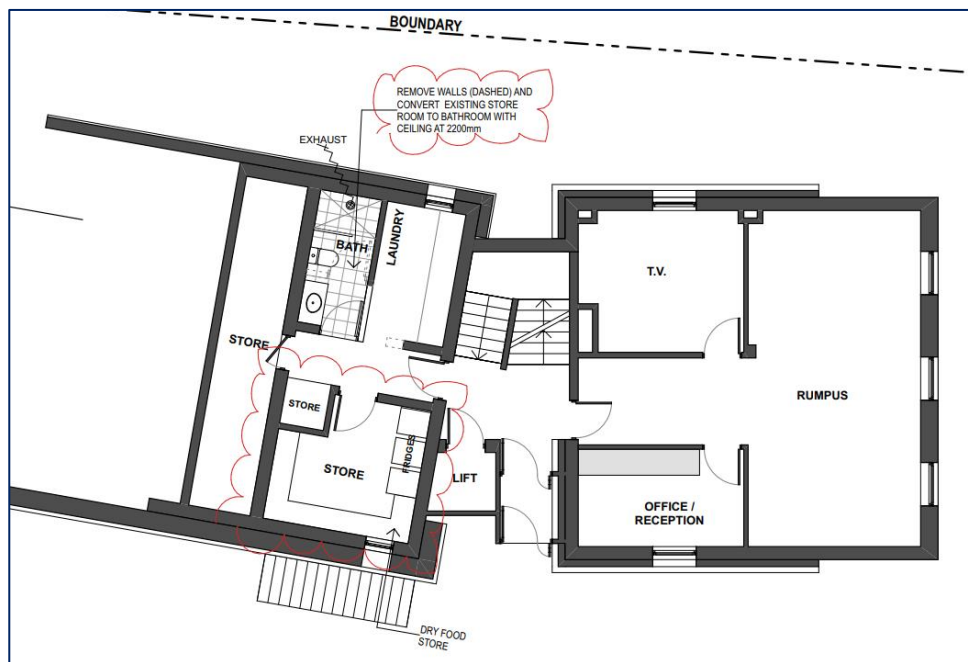


Figure 2 | Level 1 bathroom, laundry and storeroom modifications (Source: Applicant's documentation)

On Level 2:

- conversion of the existing approved spa and sauna room (as per DA 9602) into a bedroom to provide staff accommodation for two people with a refurbished ensuite. The proposed works include removal of internal walls and removal of the existing ceiling to be rebuilt to 2400mm (**Figure 3**). Two (2) external windows to the proposed bedroom on the western elevation of the building will also be enlarged to approximately twice their existing height (to height of 1000mm) (**Figure 4**).

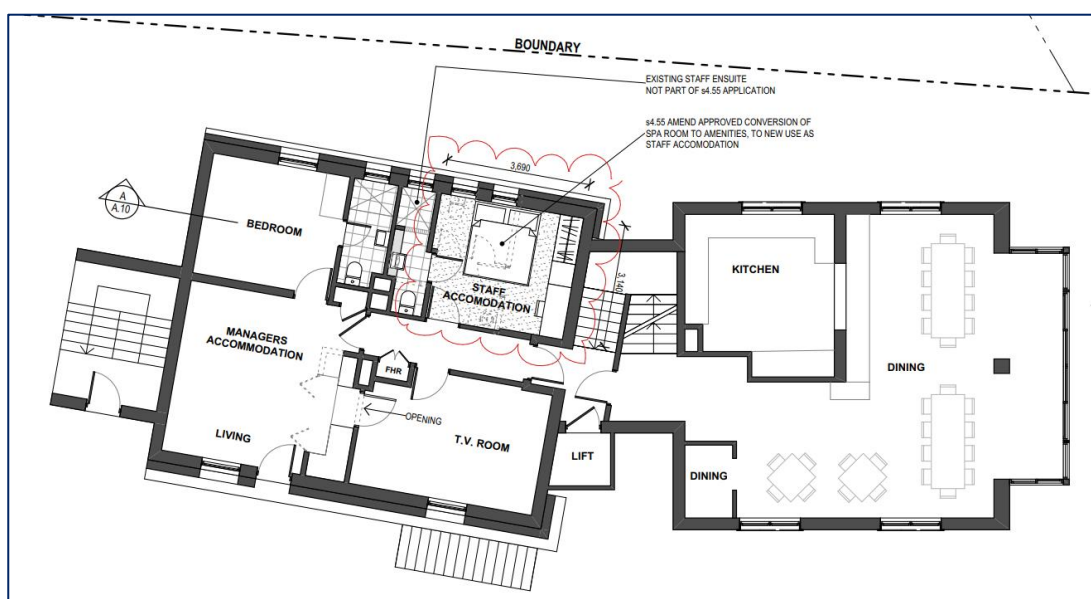


Figure 3 | Level 2 staff accommodation – former spa and sauna room (Source: Applicant's documentation)



Figure 4 | Window enlargement to staff bedroom (Source: Applicant's documentation with annotations)

The Minister for Planning is the consent authority for development within Thredbo Alpine Resort in KNP and the proposal is permissible with consent under the provisions of *State Environmental Planning Policy (Precincts – Regional) 2021* (the Precincts – Regional SEPP).

Supporting documents and supporting information to this assessment report can be found on the NSW Planning Portal website at:

<https://www.planningportal.nsw.gov.au/development-assessment/state-significant-applications/projects/state-development-applications>

2 Matters for Consideration

2.1 Strategic Context

South East and Tableland Regional Plan 2036

The Department considers the proposal continues to be consistent with the Regional Plan as the proposal supports the improvement of a tourist accommodation building through providing an increase to staff accommodation provisions and functionality of a building for its staff and visitors within Thredbo Alpine Resort, which supports the ongoing visitation to the NSW ski resorts.

Snowy Mountains Special Activation Precinct Master Plan

The Department considers that the proposal supports the vision of the Master Plan, while also ensuring impacts upon the environment have been considered against those previously approved. The proposed change in use of areas within the Lodge and minor external works raise no additional matters that would be inconsistent with the Master Plan.

Precincts – Regional SEPP

The Department considers the proposal continues to be consistent with Chapter 4 of the Precincts – Regional SEPP as the proposal continues to contribute to tourist accommodation and to better support staff accommodation availability within KNP, which supports sustainable tourism in the Alpine Region. The potential impacts on the environment continue to be considered acceptable when noting the contained nature of the location of the modification works and their minimal impact on the environment.

2.2 Mandatory matters for consideration

The Department conducted a comprehensive assessment of the project against the mandatory matters for consideration as part of the original assessment of DA 9602. The Department considers this modification application does not result in significant changes that would alter the mandatory matters for consideration under section 4.15 of the EP&A Act and conclusions made as part of the original assessment.

Objects of the EP&A Act

The Minister or delegate must consider the objects of the EP&A Act when making decisions under the Act. The Department is satisfied the proposed modification is consistent with the objects of the EP&A Act.

Biodiversity Conservation Act 2016

Section 1.7 of the EP&A Act requires the application of the *Biodiversity Conservation Act 2016* (BC Act) in connection with the terrestrial environment. The BC Act introduced a Biodiversity Offsets Scheme (BOS) that applies when:

- the amount of native vegetation being cleared exceeds a certain threshold area; or
- the impacts occur within an area mapped on the Biodiversity Values Map (BVM) published by the Minister for Environment; or
- the 'test of significance', in section 7.3 of the BC Act, identifies that the development or activity is likely to significantly effect threatened species or ecological communities, or their habitats; or

- the works are carried out in a declared area of outstanding biodiversity value.

The Department notes that no additional vegetation management is required to facilitate the modification, with the works primarily being internal to the building and the window and vent works being contained to an existing external wall. No additional site disturbance is likely in relation to the proposed modification works, with the site already required to be provided as an Inner Protection Area under the existing approval.

The Department also notes that there is currently no declared area of outstanding biodiversity value within Kosciuszko National Park.

Environmental Planning Instruments

The Precincts – Regional SEPP is the principal EPI that applies to this application. An assessment of compliance with former Alpine SEPP was undertaken in the determination of the original application (DA 9602).

The Department has considered the current modification application against the provisions of Chapter 4 of the Precincts – Regional SEPP and is satisfied the modification proposal continues to be consistent with this EPI.

2.3 Scope of modifications

Section 4.55(1A) of the EP&A Act provides that a consent authority may, on an application being made by the Applicant or any other person entitled to act on a consent granted by the consent authority, and subject to and in accordance with the *Environmental Planning and Assessment Regulations 2021* (EP&A Regulations), modify a consent if the following requirements in Table 1 are met:

Table 1: Consideration under Section 4.55(1A) of the EP&A Act

Section 4.55(1A) - Evaluation	Comment
(a) <i>That the proposed modification is of minimal environmental impact</i>	<p>Section 4 of this report provides an assessment of the impacts associated with the proposal.</p> <p>The Department is satisfied that the proposed modifications will have minimal environmental impact with no additional vegetation removal required to facilitate the development and minimal impact on adjoining land users.</p>
(b) <i>The development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)</i>	<p>The proposal changes the approved development in terms of changing the location of guest bathroom facilities, changing a general storeroom to a food store to support the commercial kitchen that operates at the Lodge, and providing an additional staff bedroom (although not increasing the number of staff who may stay at the property).</p> <p>The Department is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted.</p>

(c) <i>The application has been notified in accordance with the regulations</i>	In accordance with the Department's Community Participation Plan (CPP), November 2019, the Department publicly exhibited the modification application for a minimum of 14 days and it was made publicly available on the NSW Planning Portal website (refer to Section 3 of this report).
(d) <i>Consideration of any submissions made concerning the proposed modification within the period prescribed by the regulations</i>	The Department has considered the submissions received during the exhibition period (refer to Section 3 of this report).

Section 4.55(3) of the EP&A Act provides that in determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the granting of the consent that is sought to be modified.

The relevant consideration under section 4.15(1) of the EP&A Act in relation to the proposed modifications is whether the impacts of the amendments upon the existing environment or amenity of the building occupants are appropriate. The Department's assessment in **Section 4** concludes that the impacts of the works as modified will be minimal in extent and appropriately managed, and the impacts are considered acceptable. No variation is required to the Department's previous assessment.

Therefore, the Department is satisfied the proposed modification is within the scope of section 4.55(1A) of the EP&A Act and does not constitute a new development application. Accordingly, the Department considers that the application should be assessed and determined under section 4.55(1A) of the EP&A Act rather than requiring a new development application to be lodged.

2.4 Other approvals

Rural Fires Act 1997

As the original works required a Bush Fire Safety Authority (BFSA) from the RFS under section 100B of the *Rural Fires Act 1997* as integrated development pursuant to section 4.46 of the EP&A Act. On 5 October 2018 the RFS issued the BFSA together with general terms of approval relating to matters including the establishment of an asset protection zone, design and construction standards, and preparation of an emergency evacuation plan.

Refer to **Section 3** for further discussion on this component in relation to the modification application.

3 Submissions

3.1 Department's engagement

The Department's Community Participation Plan (CPP), November 2019, prepared in accordance with Schedule 1 of the EP&A Act requires applications for modifications of development consent that are not required to be exhibited by the EP&A Regulations to otherwise be exhibited for a timeframe dependent on the urgency, scale and nature of the proposal.

In this regard, the Department also notes that the CPP advises that applications for development consent under Chapter 4 of the Precincts – Regional SEPP are not required to be public exhibited if the proposal relates to works which are wholly internal to a building or where the site is located more than fifty (50) metres from a tourist accommodation building. As the modification involves external works to the building and is within fifty metres of other tourist accommodation buildings, the Department notified nearby lodges and made the application publicly available on the NSW Planning Portal website between 3 April 2023 and 14 April 2023.

The application was referred to the RFS pursuant to section 4.47 of the EP&A Act (integrated development) as General Terms of Approval under the *Rural Fires Act 1997* are required for the development to be carried out. The application was also forwarded to the National Parks and Wildlife Service (NPWS) pursuant to section 4.27 of the Precincts – Regional SEPP.

Following the exhibition of the application, the Department placed copies of all submissions received on its website and forwarded these to the Applicant.

3.2 Summary of submissions

During the exhibition, the Department received comments from the RFS and the NPWS. No public submissions were received.

Key issues – Government Agency

The RFS reviewed the modification application and reissued the BFSA under the *Rural Fires Act 1997* that included updating the General Terms of Approval under the EP&A Act in which relevant sections of the RFS document *Planning for Bushfire Protection* (PBP) were updated from PBP 2006 to PBP 2019.

The NPWS raised no concerns with the proposed modification, however noted that the modification works to the accommodation facility have the potential to affect occupancy (additional staff bedroom), and Lessor's consent under the Head Lease will be required for the development which is the subject of the MOD. The NPWS advised that their Visitor Engagement and Revenue Branch (VERB) has accepted the MOD referral as a request for Lessor's consent and they will contact the Lessee separately about the matter. The NPWS had no further comments on impacts to the environmental or cultural values of KNP that might arise from the modified development and reiterated that the comments provided for the original Application remained valid.

The Applicant advises that the proposal does not seek to increase the capacity of the licence for the number of beds or accommodation at the Lodge, for which the maximum bed licence that the property currently holds for thirty-eight (38) beds is not changing. The Applicant further advises that the proposal seeks to provide the extra bedroom only to allow flexibility in the way the beds are allocated within the lodge and

will ensure occupancy consistent with the licence. An additional condition of consent has been included to ensure that occupancy of the additional staff bedroom created by the modification does not exceed licenced numbers across the property (refer to **Section 4** of this report).

4 Assessment

In assessing the merits of the proposed modification, the Department has considered the:

- previous Environmental Assessment Reports for the proposal,
- the modification application and existing conditions of consent,
- submissions from government agencies, and
- matters for consideration under section 4.15(1) of the EP&A Act.

The Department's assessment considers the modification would result in minimal impacts upon the natural environment, with the modification application relating mainly to internal works apart from installation of two (2) enlarged windows and an external bathroom exhaust.

The Applicant indicates the works are substantially the same as the development for which the consent was originally granted. With the implementation of appropriate environmental controls that were approved under DA 9602, the impacts of the proposal are considered acceptable.

The Department has included a new advisory note to the conditions to ensure that the additional staff bedroom created by the modification can only be utilised by staff when the total number of staff accommodated at the lodge does not exceed the number permitted in their sublease under licence by the NPWS in accordance with the KNP Plan of Management. Use of the additional bedroom does not permit additional occupation of the lodge.

Conditions are also recommended, as provided by NPWS, in terms of the food storage area (located on Level 1) as the proposed works in part relate to a commercial food storage area, with all areas where food is prepared and stored needing to comply with the provisions of Australian Standard *AS4674-2004 (Design Construction and Fit-out of Food Premises)* and the *Food Act 2003*. Prior to an Occupation Certificate being issued, the Applicant is to arrange for an inspection of the completed works by the NPWS Environmental Health Officer to ensure the food storage area complies with the relevant standards.

The Department also notes that works proposed in accordance with the original development application (DA 9602) included refurbishment of the bathroom (shower, toilet and handbasin) on Level 2 adjoining the spa and sauna room. That bathroom is now proposed to form the private ensuite to the proposed staff accommodation room created in accordance with this modification. While no construction certificate had been issued for the property pursuant to DA 9602 at the time of compiling this assessment report, during an inspection of the property on 1 May 2023 the Department observed that the works proposed to the subject Level 2 bathroom were nearing completion. The Applicant has advised that the works were undertaken in accordance with exempt development provisions under the Precincts – Regional SEPP.

The application for modification was referred to the Department's Principal Building Surveyor for consideration. Subsequent to review of both the proposal and of the original application, together with undertaking an inspection of the site and the conditions applied to the original DA, referral comment was received that no additional Building Code of Australia (BCA) conditions are required. Necessary matters such as the room heights and light and ventilation requirements for the rooms that are proposed to change use as part of this MOD application have been indicated on the proposed plans, and matters of compliance with the BCA are considered to remain the responsibility of the Certifier.

Noting the above, the proposed modification to the consent is supported, subject to updating the conditions of consent where relevant to the modification, including reference to the modified plans (updated Condition A.2.), and inclusion of an Advisory Note specifying the accommodation occupancy operating requirements (new Condition AN.3.) and those relevant to the food storage area.

5 Recommendation

The Department has assessed the modification application and supporting information in accordance with the relevant requirements of the EP&A Act and considered the submissions provided by the RFS and NPWS.

The Department's assessment concludes that the proposed modification is appropriate as the modification is of minimal environmental impact and the additional environmental impact is acceptable being substantially the same development as originally approved; the proposed modifications to conditions are acceptable; the proposal continues to comply with the Precincts – Regional SEPP provisions; the modification was notified and all submissions received during the assessment of the application have been considered; and the site remains suitable for the development, as modified.

Overall, the Department is satisfied that supporting the modified proposal is in the public interest.

As the original application was determined under the delegation of the then Minister for Planning, the Minister therefore remains as the consent authority for any subsequent applications to modify the consent. In accordance with the Minister's delegation of 9 March 2022, the Team Leader, Alpine Resorts Team may determine the application as

- no reportable political donation has been disclosed,
- there are less than 15 public submissions in the nature of objections, and
- the application is in relation to land which Chapter 4 of the Precincts – Regional SEPP applies.

It is recommended that the Team Leader, Alpine Resorts Team, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report
- **determines** that the modification application MOD 23/3688 (DA 9602 MOD 1) falls within the scope of section 4.55(1A) of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **modifies** the consent DA 9602
- **signs** the attached approval of the modification (**Appendix A**).

Recommended by:



Sandria Butler
Senior Planning Officer
Alpine Resorts Team

Adopted by:



10/07/2023

Mark Brown
Acting Team Leader
Alpine Resorts Team
as delegate of the Minister for Planning

Appendices

Appendix A – Notice of Modification